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61817—36

In the Supreme Court of the United States

OCTOBER TERM, 1935

No. —

THE UNITED STATES OF AMERICA, PETITIONER

v.

RAYMOND WOOD

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

The Solicitor General, on behalf of the United States, prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the District of Columbia in the case of *Raymond Wood, Appellant* v. *United States* (Docket No. 6646), entered on March 25, 1936, reversing the judgment of the Police Court of the District of Columbia.

OPINIONS BELOW

No opinion was rendered by the Police Court. The opinion of the Court of Appeals (R. 8) has not yet been reported.

JURISDICTION

The judgment of the Court of Appeals was entered March 25, 1936 (R. 16). The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code as amended by the Act of February 13, 1925, and under Rule XI of the Rules of Practice and Procedure In Criminal Cases, promulgated by this Court May 7, 1934.

QUESTION PRESENTED

Whether the Act of Congress removing the disqualification of Government employees and pensioners as jurors in the District of Columbia in cases in which the United States is a party contravenes the Sixth Amendment of the Federal Constitution.

STATUTES INVOLVED

Act of August 22, 1935, c. 605, 49 Stat. 682:

> *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That section 360 of title 18 of the Code of the District of Columbia of 1929, otherwise known as "section 217 of the Code of Law for the District of Columbia", approved March 3, 1901, be, and the same is hereby, amended to read as follows:
>
> "All executive and judicial officers of the Government of the United States and of the District of Columbia, all officers and enlisted men of the Army, Navy, Marine Corps, and Coast Guard of the United States in active service, those connected with the police and

fire departments of the United States and of the District of Columbia, counselors and attorneys at law in actual practice, ministers of the gospel and clergymen of every denomination, practicing physicians and surgeons, keepers of hospitals, asylums, almshouses, or other charitable institutions created by or under the laws relating to the District of Columbia, captains and masters and other persons employed on vessels navigating the waters of the District of Columbia shall be exempt from jury duty, and their names shall not be placed on the jury lists.

"All other persons, otherwise qualified according to law whether employed in the service of the Government of the United States or of the District of Columbia, all officers and enlisted men of the National Guard of the District of Columbia, both active and retired, all officers and enlisted men of the Military, Naval, Marine, and Coast Guard Reserve Corps of the United States, all notaries public, all postmasters and those who are the recipients or beneficiaries of a pension or other gratuity from the Federal or District Government or who have contracts with the United States or the District of Columbia, shall be qualified to serve as jurors in the District of Columbia and shall not be exempt from such service: *Provided,* That employees of the Government of the United States or of the District of Columbia in active service who are called upon to sit on juries shall not be paid for such jury service but their salary shall not be dimin-

ished during their term of service by virtue of such service, nor shall such period of service be deducted from any leave of absence authorized by law."

Approved, August 22, 1935.

Prior to the above amendment, Section 360 of Title 18 of the Code of the District of Columbia of 1929 read as follows:

> 360. *Exemption from jury service.*—All executive and judicial officers, salaried officers of the Government of the United States and of the District of Columbia, all officers and enlisted men of the National Guard for the District of Columbia, both active and retired, and those connected with the police or fire departments, counselors and attorneys at law in actual practice, ministers of the gospel and clergymen of every denomination, practicing physicians and surgeons, keepers of hospitals, asylums, almshouses, or other charitable institutions created by or under the laws relating to the District, captains and masters and other persons employed on vessels navigating the waters of the District shall be exempt from jury duty, and their names shall not be placed on the jury lists.

STATEMENT

Respondent Wood was tried in the Police Court of the District of Columbia under an information charging petty larceny (R. 1–2). At his trial twelve prospective jurors were called, of whom one was a housewife who received a Civil War pension,

one was the holder of a veteran's bonus certificate, and four were employees of the United States Government (R. 4–5). The respondent's challenges to these jurors, on the ground that each had an interest in the United States which disqualified him to sit in the trial of a criminal case to which the United States was a party, were disallowed. (R. 5.) Respondent exercised his three peremptory challenges (R. 5). The jury finally impaneled and sworn to try the respondent included a clerk in the United States Treasury, a clerk at the United States Navy Yard, and the Civil War pensioner (R. 5). Respondent was tried and convicted, and a motion for a new trial on the ground that the jury was illegally constituted was overruled and sentence of confinement in jail for 240 days was imposed (R. 5). On appeal, the Court of Appeals for the District of Columbia reversed the judgment, Robb, J., dissenting (R. 14).

SPECIFICATION OF ERRORS TO BE URGED

The Court of Appeals for the District of Columbia erred:

1. In holding that the Act of August 22, 1935, is unconstitutional as contravening the Sixth Amendment.

2. In holding that Government employees and pensioners are disqualified by interest from acting as jurors in cases in which the United States is a party.

3. In reversing the judgment of the Police Court of the District of Columbia.

REASONS FOR GRANTING THE WRIT

1. The Court of Appeals for the District of Columbia has decided a constitutional question, in a manner which we believe to be erroneous, seriously affecting the administration of justice, and particularly the criminal law, in the District of Columbia. The decision below holds that Congress is without power to remove the common-law disqualification of employees and pensioners of the Federal Government as jurors in cases in which the United States is a party. In the District of Columbia, as the court below pointed out (R. 14), the status of more than 100,000 Government employees as eligible jurors is affected. In the court below respondent stated, as a fact of which the court might take judicial notice, that this number constituted approximately one-half of the total number of qualified jurors in the District. The statute in question was enacted in view of the fact that it had been "exceedingly difficult to obtain the best personnel on juries in the District" under the common-law disqualification. See Senate Report 1297, 74th Cong., 1st Sess.; House Report 1421, 74th Cong., 1st Sess.

While the constitutional question has particular importance for the District of Columbia, it is worthy of note that by a statute of general application the qualifications of jurors in the Federal courts are determined in accordance with the applicable state laws. R. S., Sec. 800, U. S. Code, Title 28, Sec. 411; *Johnson* v. *United States,* 11 F.

(2d) 606 (C. C. A. 5th); *Vause* v. *United States,* 53 F. (2d) 346, 355 (C. C. A. 2d).

2. We submit that the court below has applied the Sixth Amendment of the Federal Constitution in a manner neither required nor warranted by the decisions of this Court. Chief emphasis was placed upon *Crawford* v. *United States,* 212 U. S. 183. In that case this Court held that the then existing statute concerning jurors in the District of Columbia did not purport to abrogate the common-law rules of qualification; that the common law to be applied was, under the District of Columbia Code, the common law of Maryland in 1801; that under the common law the relationship of master and servant obtaining between a litigant and prospective juror served to disqualify the juror; and that this relationship existed where the prospective juror drew compensation from the United States for his services in conducting a postal substation in his place of business. The Court went on to observe that the facts of that case lent support to the wisdom of the common-law rule. It may be noted, as bearing upon the possibility of interest on the part of the juror, that the prosecution in that case was for conspiracy to defraud the United States in furnishing supplies to the Post Office Department. No constitutional issue was involved in the case and none was discussed. The extract from the opinion quoted in the dissenting opinion in the case at bar (R. 15) demonstrates that the Court in the *Crawford* case

was concerned only with the common-law rule. This is further shown by the following passage (212 U. S. at 194):

> There may be statutes in the different States as to qualifications of jurors *which in their construction would not prevent the application of the common law in regard thereto,* and so the question of qualification being the same in the Federal as in the state courts (Rev. Stat., Sec. 800; 1 Comp. Stat., p. 623), may be a general one. [Italics supplied.]

It was in the light of the *Crawford* decision that the statute in question was enacted.

That Congress and the courts are charged with the duty of preserving the right to an impartial jury which is guaranteed by the Sixth Amendment, no one will question. But we submit that the court below erred in holding that that Amendment prevents any alteration whatever in those subsidiary common-law rules which are but means for securing an impartial jury. As was said by this Court with respect to a similar question, "There is nothing in the Constitution of the United States which requires the Congress to grant peremptory challenges to defendants in criminal cases; trial by an impartial jury is all that is secured." *Stilson* v. *United States,* 250 U. S. 583, 586. See also *Spies* v. *Illinois,* 123 U. S. 131, 168–170. It has never been held hitherto that the Sixth Amendment requires the perpetuation of absolute presumptions, or implications, of bias

based on relationship. Compare *Funk* v. *United States,* 290 U. S. 371. Similar constitutional provisions which have been adopted by all the States (*Hayes* v. *Missouri,* 120 U. S. 68, 69) have not prevented changes in the common-law rules of disqualification of jurors for consanguinity within the ninth degree, *Churchill* v. *Churchill,* 12 Vt. 661; for trivial pecuniary interest, *Commonwealth* v. *Brown,* 147 Mass. 585, 591; *Smith* v. *German Ins. Co.,* 107 Mich. 270; *Dallas* v. *Peacock,* 89 Tex. 58, 60; or for employment by the sovereign, *Fellows's case,* 5 Me. 333, 334–335; *People* v. *Lange,* 90 Mich. 454; *Glassinger* v. *Ohio,* 24 Ohio St. 206; *Thompson* v. *Commonwealth,* 88 Va. 45, 46.

The statute involved merely removes the absolute disqualification of Government employees and pensioners, which was previously a ground of challenge for principal cause, and leaves such persons subject to challenge for actual bias, as in the case of other prospective jurors. The reasonableness of this change, and its consistency with the requirement of an impartial jury, are evidenced by the application of the statute to the facts of the present case. The Government had no pecuniary interest in the case; its interest was solely that of the sovereign as keeper of the peace. The natural interest of the jurors in question would be that of citizens; none of them was employed by any interested Department; and the two who were employed as clerks presumably enjoyed the protection of civil

service status. A conclusive presumption of bias in such circumstances, we submit, can be negatived by statute without any impairment of the defendant's constitutional right to trial by an impartial jury.

Because of the importance and novelty of the question presented, it is respectfully submitted that this petition should be granted.

STANLEY REED,
Solicitor General.

APRIL, 1936.

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